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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,512	04/19/2001	Jennifer Leupin Moe	8045M	9448

27752 7590 03/03/2004

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EXAMINER	
MRUK, BRIAN P	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/838,512	MOE ET AL.	
	Examiner	Art Unit	
	Brian P Mruk	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 January 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1-8-02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

2. The examiner makes of record that the limitations that follow the term "preferably" in instant claims 1 (5 occurrences) and 6 (5 occurrences) are merely exemplary ranges, and thus, the prior art will be applied against the broadest range recited in the instant claims. Furthermore, the examiner suggests that applicant should delete the narrow ranges from instant claims 1 and 6, and add a new dependent claim that recites the narrow ranges recited in instant claims 1 and 6.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Instant claim 1 recites "by weight of a mixture of...oligomers of the general formulas, alone or in combination". This limitation renders the claim vague and indefinite, since it is unclear if a mixture of the two components or just one of the components is required. Appropriate correction and/or clarification is required.

6. Instant claims 1, 3, 6 and 8 recite the limitations "wherein each Z" and "wherein M". However, the examiner notes that these variables are missing from instant claims 1, 3, 6 and 8. The examiner suggests that instant claims 1, 3, 6 and 8 should be amended to add the variables "Z" and "M" in the recited structures to provide proper antecedent basis for these variables. Appropriate correction and/or clarification is required.

7. Instant claims 2-5 and 7-14 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Leupin et al, WO 99/14295.

Leupin et al, WO 99/14295, discloses a laundry detergent composition comprising 0.1-5% by weight of a hydrophobically modified cellulose material (see page 4, line 28-page 7, line 7), 1-80% by weight of a detersive surfactant, such as a combination of anionic and nonionic surfactants (see page 7, line 21-page 9, line 24), 0.1-80% by weight of a builder, such as silicates and aluminosilicates (see page 9, line 25-page 10, line 24), and 5-12% by weight of water (see page 16, lines 5-7), per the requirements of the instant claims. It is further taught by Leupin et al that the composition is used in a method to treat fabrics to impart fabric appearance benefits (see page 16, lines 26-31). Specifically, note Examples 1-6. Furthermore, regarding applicant's recitation of what is disclosed by the instructions in instant claim 17, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or

new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch of art considered does not change these principles." Ex parte Gwinn 112 USPQ 439. As the compositions are anticipated, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention, and thus are not accorded any patentable weight. Therefore, instant claims 1-21 are anticipated by Leupin et al, WO 99/14295.

10. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Leupin et al, WO 99/14245.

Leupin et al, WO 99/14245, discloses a laundry detergent composition comprising 0.1-5% by weight of a hydrophobically modified cellulose material (see page 4, line 15-page 7, line 7), 1-80% by weight of a detersive surfactant, such as a combination of anionic and nonionic surfactants (see page 7, line 9-page 9, line 8), 0.1-80% by weight of a builder, such as silicates and aluminosilicates (see page 9, line 10-page 10, line 5), and 5-12% by weight of water (see page 14, line 30-page 15, line 1), per the requirements of the instant claims. It is further taught by Leupin et al that the composition is used in a method to treat fabrics to impart fabric appearance benefits (see page 15, lines 21-35). Specifically, note Examples 1-4 and pages 19-21, claims 1 and 5. Furthermore, regarding applicant's recitation of what is disclosed by the instructions in instant claim 17, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of

printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch of art considered does not change these principles." Ex parte Gwinn 112 USPQ 439. As the compositions are anticipated, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention, and thus are not accorded any patentable weight. Therefore, instant claims 1-21 are anticipated by Leupin et al, WO 99/14245.

11. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Leupin et al, U.S. Patent No. 6,384,011

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Leupin et al, U.S. Patent No. 6,384,011, discloses a laundry detergent composition comprising 0.1-5% by weight of a hydrophobically modified cellulose material (see col. 4, line 26-col. 5, line 65), 1-80% by weight of a detersive surfactant,

such as a combination of anionic and nonionic surfactants (see col. 6, lines 7-65), 0.1-80% by weight of a builder, such as silicates and aluminosilicates (see col. 7, line 56-col. 8, line 30), and 5-12% by weight of water (see col. 12, lines 25-32), per the requirements of the instant claims. It is further taught by Leupin et al that the composition is used in a method to treat fabrics to impart fabric appearance benefits (see col. 12, lines 59-67). Specifically, note Examples 1-6. Furthermore, regarding applicant's recitation of what is disclosed by the instructions in instant claim 17, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch of art considered does not change these principles." Ex parte Gwinn 112 USPQ 439. As the compositions are anticipated, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention, and thus are not accorded any patentable weight. Therefore, instant claims 1-21 are anticipated by Leupin et al, U.S. Patent No. 6,384,011.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-14 and 17-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,384,011. Although the conflicting claims are not identical, they are not patentably distinct from each other because Leupin et al, U.S. Patent No. 6,384,011, claims a similar laundry detergent/additive composition comprising 1-80% by weight of a surfactant, 0.1-5% by weight of a cellulosic based polymer, and 1-80% by weight of water (see claims 1-10 of U.S. Patent No. 6,384,011), as required in instant claims 1-14 and 17-20. Therefore, claims 1-14 and 17-20 of the instant invention are an obvious formulation in view of claims 1-10 of Leupin et al, U.S. Patent No. 6,384,011.

14. Claims 1-5, 11-12 and 17-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,579,840. Although the conflicting claims are not identical, they are not patentably distinct from each other because Heltovics, U.S. Patent No. 6,579,840, claims a similar laundry detergent/additive composition comprising 1-80% by weight of a cationic surfactant, and 0.1-5% by weight of a cellulosic based polymer (see claims 1-9

of U.S. Patent No. 6,579,840), as required in instant claims 1-5, 11-12 and 17-20. Therefore, claims 1-5, 11-12 and 17-20 of the instant invention are an obvious formulation in view of claims 1-10 of Heltovics, U.S. Patent No. 6,579,840.

15. Claims 1-14 and 17-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-29 of copending Application No. 09/890,674. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 09/890,674 claims a similar laundry detergent/additive composition comprising 1-80% by weight of a surfactant, 0.1-5% by weight of a cellulosic based polymer, and 1-80% by weight of water (see claims 12-29 of copending Application No. 09/890,674), as required in instant claims 1-14 and 17-20. Therefore, claims 1-14 and 17-20 of the instant invention are an obvious formulation in view of claims 12-29 of copending Application No. 09/890,674.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BIM
Brian Mruk
February 23, 2004

Brian P. Mruk
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Primary Examiner
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